

1 first of the following month.

2 MR. ANTONIOU: I was going to add a point,
3 let's say that all those circuits are, in fact,
4 identified in that September 10th e-mail, and there
5 are some questions about whether particular
6 circuits, in fact, meet the test, and it takes
7 until December 1st or, say, January 1st, the number
8 of months to get through those questions--if at the
9 end of the day the circuits did meet the test, the
10 financial outcome of that conversion, giving effect
11 to the lowering of the rates going from access to
12 UNE and giving effect to any termination
13 liabilities, would go back to October 1st.

14 The fact it takes time for the parties to
15 work out the specifics does not change when the
16 carrier gets the economic benefits or development
17 in the short term of, in fact, having done the
18 conversion. I think that's an important point to
19 make.

20 MR. MELLUPS: Thank you.

21 Without objection, I will move on to
22 III-7-B.

1 Just a couple of questions on III-7-B,
2 which is the bulk ordering issue. I think you
3 would agree that the guidelines which were
4 previously introduced as AT&T 19 provide a
5 five-step bulk conversion process and also
6 eliminates the need for a specific service order;
7 is that correct?

8 MS. FOX: That's correct.

9 MR. MELLUPS: You are aware that AT&T is
10 willing to work within the existing conversion
11 process of the guidelines, but has requested some
12 modifications to meet its needs; do you agree with
13 that?

14 MS. FOX: Yes, I agree you have requested
15 some modifications, but would you be able to go
16 through those modifications that you have
17 requested?

18 MR. MELLUPS: To tell you the truth, I
19 don't know what they are. I know they were some,
20 but that's not really the thrust of my question.

21 MS. FOX: Okay.

22 MR. MELLUPS: I think what I was trying to

1 suggest is that there may be some room here for the
2 parties to agree on some kind of modifications, but
3 I want to go back to something that was said by
4 Verizon early on in this arbitration, and that is
5 that it would not develop a separate ordering
6 process for AT&T because Verizon's process is based
7 on industry guidelines and Verizon does not accept
8 multiple requests on a single notice. That was
9 said in Verizon's response to AT&T's petition. And
10 I don't have an exhibit number for that in my head.

11 MR. GARY: Is there a question?

12 MS. FARROBA: I don't know that that is an
13 exhibit.

14 MR. MELLUPS: All right. I didn't get to
15 the question.

16 The question is: Does Verizon still
17 maintain that it would not negotiate a separate
18 ordering process for AT&T?

19 MS. FOX: Well, it's difficult for us to
20 implement processes and procedures that are
21 different for each CLEC. Now, if your proposal is
22 something that would benefit everyone, and it's

1 something we could do, we would like to talk about
2 it.

3 Now, I know one issue that you have had
4 with our conversion guidelines is that you
5 never--you wanted us to agree that you would never
6 have to submit an LSR, and we recently made
7 changes. We have been working towards making
8 changes that never happened. You never have to
9 submit an LSR or an ASR to do a conversion.

10 So, if we talk specifics, I think I can
11 comment more intelligently about it.

12 MR. MELLUPS: Okay. That sort of leads me
13 into the final subissue of this III-7-C, which is
14 termination liabilities, or the lack thereof, I
15 guess, from our perspective.

16 Would you agree that--first, let me make a
17 statement, and that is that in the UNE Remand
18 Order, the FCC stated, and I quote, (reading) Any
19 substation of unbundled element for access would
20 require the requesting carrier to carry any
21 appropriate termination penalties under volume or
22 term contracts.

1 This is at footnote 985.

2 Would you--in light of that statement by
3 the FCC, would you agree that the issue here is
4 what is an appropriate termination liability?

5 MS. FOX: I'm not sure there is an issue.

6 MR. MELLUPS: I didn't hear you.

7 MS. FOX: I'm not sure there is an issue.

8 Termination liability, if you're talking
9 specifically termination liability as described in
10 our Federal tariffs, to the extent you disconnect a
11 service you're purchasing pursuant to Federal
12 tariff, termination of liability may apply as
13 outlined in the tariff.

14 So, as far as Verizon is concerned,
15 termination liability may apply, depending on the
16 specific situation of the conversion, not the
17 specific amount, because the specific calculations
18 are also outlined in the Federal tariffs.

19 MR. MELLUPS: Right.

20 Does Verizon provide--does Verizon, in
21 fact, on occasion, waive, adjust, or renegotiate
22 such termination liabilities as they may be either

1 in contracts or tariffs for wholesale and retail
2 customers?

3 MS. FOX: I can't address retail, but I
4 could address wholesale. It's not Verizon's policy
5 to waive termination liability for purchases out of
6 the Federal tariffs.

7 MR. MELLUPS: What about Verizon increases
8 the rates by 8 percent or more?

9 MS. FOX: I would consider that a term
10 associated with the service, not a situation where
11 Verizon is willing to negotiate waiving termination
12 liability. Instead, what you're referring to is
13 that there are certain situations that we have
14 identified under which termination liability would
15 not apply.

16 For example, the situation you're
17 referring to, if rates increased to a certain
18 amount, we would allow customers to discontinue
19 services without liability.

20 MR. MELLUPS: Is this provisioned in the
21 tariff?

22 MS. FOX: Yes, it is.

1 MR. MELLUPS: What about in a situation
2 where Verizon has a rate decrease pursuant to a
3 discount pricing plan? Is that also in the tariff?

4 MS. FOX: You know, I looked at that this
5 morning again, and I thought I really would like to
6 look at the tariff language that I used when I
7 compiled that answer, so I would like to say,
8 subject to check, I need to look at the termination
9 liability terms and conditions before I could
10 answer your question.

11 Generally, I had a question on that
12 myself, and I want to make sure that when I looked
13 at the Federal tariff that I looked at it
14 accurately and responded accurately to that
15 question.

16 MR. MELLUPS: Just for, I think, for the
17 record, I would like to take that response that the
18 witness is alluding to, which is 3.7, AT&T 3.7, and
19 I have copies here, and I think you got a copy of
20 that yesterday, do you not?

21 MS. FOX: Yes.

22 MR. MELLUPS: And that would be AT&T 21.

1 (AT&T Exhibit No. 21 was
2 marked for identification.)

3 MS. FARROBA: Are you offering for
4 admission into evidence AT&T Exhibit 21?

5 MR. MELLUPS: Yes.

6 ARBITRATOR ATTWOOD: Are there any
7 objections?

8 MR. GARY: No.

9 MS. FARROBA: AT&T Exhibit Number 21 is
10 admitted.

11 (AT&T Exhibit No. 21 was
12 admitted into evidence.)

13 MS. FARROBA: Let's go ahead and do it
14 now. Exhibits AT&T 18 and 19 and 20 that have been
15 discussed during the panel, do you offer those?

16 MR. MELLUPS: I would offer them into
17 evidence, yes.

18 MS. FARROBA: Any objections?

19 MR. GARY: No objections.

20 MS. FARROBA: Okay. AT&T Exhibits 18
21 through 20 are also admitted. Thank you.

22 (AT&T Exhibit Nos. 18

1 through 20 were admitted
2 into evidence.)

3 MR. MELLUPS: That reply also addresses
4 Verizon's treatment of retail customers. Is there
5 anybody on the panel that can address that
6 particular part of the answer?

7 MS. FOX: No.

8 MR. MELLUPS: I guess in that case I will
9 have to let the answer speak for itself.

10 MS. FOX: And the rate decrease addressed
11 in that answer applies to the rate for the service
12 within the tariff itself. It wouldn't imply that
13 all of a sudden you could offer--you could buy a
14 TELRIC-priced UNE combination because the terms and
15 conditions in that Federal tariff are solely for
16 services purchased pursuant to that tariff and in
17 accordance with that tariff. So, that means that
18 particular term has no bearing on UNE combination.

19 And I want to make sure you understand
20 that in no way does the way that's written mean
21 that if UNE combination is cheaper than special
22 access that you could abandon one for the other

1 without termination liability.

2 MR. MELLUPS: Well, in light of what you
3 just said, let me return, then, to the retail part
4 of this, and we will have to let the answer speak
5 for itself, but I want to step you through it very
6 briefly.

7 In the case of retail customers,
8 particularly retail customers that take service
9 under a contract type arrangement, or maybe a
10 contract tariff type arrangement, perhaps, there
11 are--there are, are there not, in that answer three
12 different situations where Verizon would, in fact,
13 have considered adjusting, waiving, or
14 renegotiating a termination liability? And those
15 are network optimization, business downturn and
16 benching or, in other words, a competitive bid. Is
17 that not in the answer you supplied to AT&T?

18 MS. FOX: That's in the answer, but I have
19 to say I didn't supply the answer.

20 MR. MELLUPS: I think that's all I have.
21 Thanks.

22 MR. SCHNEIDER: We have nothing else on

1 that.

2 MS. FARROBA: Okay. Are we through with
3 issue III-7, including all the subsections A, B,
4 and C?

5 MR. MELLUPS: AT&T is done, yes.

6 MR. SCHNEIDER: WorldCom is done--we are
7 not done.

8 MS. FARROBA: Let's go ahead and try to
9 get through the other issues that are under
10 subpanel one, starting with issue III-8.

11 MS. KELLEY: I have a few questions,
12 whomever is best to address this.

13 And I want to direct you to your late
14 filed testimony--which was filed on August 31st, I
15 believe it's Verizon 23 at page nine, and there is
16 the following question and answer on that page.
17 I'm going to read the question and just the first
18 two sentences of the answer, understanding there is
19 a lot more that goes on.

20 The question reads, (reading):

21 "QUESTION: Does Verizon Virginia
22 agree that co-location is required to

1 access UNES?

2 "ANSWER: No. AT&T and WorldCom
3 misunderstand Verizon Virginia's position
4 on access to UNES and appropriate UNE
5 combinations. Verizon Virginia will
6 provide nondiscriminatory access to CLECs
7 at any technically feasible point as
8 provided in Commission Rule 51.307."
9 Have you found the place where I'm reading
10 from?

11 MS. FOX: Actually, I haven't. Which
12 document?

13 MS. KELLEY: Did you find the place in the
14 document I'm referring to?

15 MS. FOX: Yes.

16 MS. KELLEY: I would like to turn now to
17 Section 1.7 of your proposed UNE attachment, and
18 that's to the agreement of--that you proposed to
19 WorldCom. Have you found that section?

20 MS. FOX: Yes.

21 MS. KELLEY: That section reads,
22 beginning, (reading) Except as otherwise expressly

1 stated in this agreement, CLECs shall access
2 Verizon's UNEs specifically identified in this
3 agreement via co-location, and then it goes on.

4 Is that correct?

5 MS. FOX: Yes.

6 MS. KELLEY: Now, in this testimony, the
7 same testimony to which you just referred on pages
8 nine and ten--and this isn't a question--I want to
9 identify where we are looking--you point to a
10 variety of places in your proposed agreement in
11 which you offered to provide access to certain UNEs
12 in certain ways. For example, access to feeder
13 subloops at remote terminals and access to
14 distribution subloops through connection between
15 Verizon's FDI and a CLEC-owned interconnection
16 cabinet.

17 Is that right? Those are some examples of
18 what you provide?

19 MS. FOX: Yes.

20 MS. KELLEY: I don't want to discuss the
21 merits of the proposals. I want to confirm that
22 it's not your position that you have identified

1 every single technically feasible means of
2 accessing UNEs and UNE combinations in those
3 sections to which you pointed.

4 MS. FOX: I would say that's true.

5 MS. KELLEY: That's correct?

6 MS. FOX: Yes.

7 MS. KELLEY: I have nothing else.

8 MS. FARROBA: AT&T, do you have anything
9 on III-8?

10 MR. MELLUPS: No, we don't.

11 MS. FARROBA: Issue III-9, any questions?

12 MS. KELLEY: We have no questions.

13 MR. MELLUPS: I do have a couple of
14 questions. I will try to make this real quick.

15 I take it that Verizon doesn't claim that
16 locations outside of density zone one top 50 MSA
17 count towards line exemption; is that a true
18 statement?

19 MS. GILLIGAN: If you're asking if we look
20 at the customer and their locations, we will take
21 into account the lines that are outside of the top
22 50 MSAs in terms of determining whether or not the

1 customer meets the four or more line criteria; that
2 is, if we choose to invoke the exemption.

3 MR. MELLUPS: In one of your data
4 responses--and I think--let me state it and see if
5 you agree with my statement--that Verizon's billing
6 system can't accurately implement the top 50 MSA
7 densities zone one requirements--that's my
8 interpretation--because here, and I quote, "the
9 billing system does not seek to identify each
10 physical service location belonging to a single
11 retail customer."

12 MS. GILLIGAN: At this point we haven't
13 done anything to modify our billing systems to
14 accommodate the local switch exemption. We see the
15 telephone number.

16 MR. MELLUPS: And I guess finally, just a
17 little short hypothetical here.

18 Assume that Verizon is a CLEC and had one
19 switch and a top 50 MSA or one switch in the LATA
20 that encompasses that MSA, and that it must rely on
21 enhanced extended loops to connect its customers to
22 that switch.

1 Further assume that you have a customer
2 with 50 separate two-line locations scattered
3 throughout the MSA or scattered throughout the
4 State of Virginia in light of your answer earlier.

5 I take it you would agree in that
6 situation--and these are scattered throughout the
7 state so there is no concentration--in the
8 situation it would take 50 separate EELs to connect
9 an enterprise with 50 separate two-line locations
10 to that switch, would it not?

11 MS. GILLIGAN: No, that's not correct.
12 Under the local switching exemption, should we
13 choose to invoke it, you will be able to get local
14 switching. You would be paying non-TELRIC prices
15 only in those offices that are zone one offices of
16 the top 50 MSAs. They would be TELRIC-based
17 outside of that area.

18 MR. MELLUPS: My predicate was the
19 TELRIC-based switching, yes.

20 MS. GILLIGAN: But you could, in fact,
21 have local switching, and you would not have to use
22 EELS to serve that customer.

1 MR. MELLUPS: Again, it's I think--part of
2 the assumption here is that you would, in fact,
3 invoke the exemption and provide the EELS, but you
4 would provide the EELS pursuant to your statement
5 of when it's available or not.

6 MS. FARROBA: Is that a question?

7 MR. MELLUPS: It was a question, yes.

8 Do you agree with that statement?

9 MS. GILLIGAN: Could you repeat it? I'm
10 confused by that.

11 MR. MELLUPS: I will skip that one. I
12 will withdraw that one.

13 I think this was covered earlier, but I
14 want to nail this down a little bit. If you were
15 to offer EELS, again, if you were to offer EELS,
16 isn't it true that the FCC has ruled that EELS must
17 be provided in any instance where Verizon chooses
18 to exercise a four-line exemption, and that's true
19 whether the EELS are currently combined UNEs or
20 not? Would you agree with that?

21 MS. FOX: Could you say that again?

22 MR. MELLUPS: Okay. Let me try that

1 again.

2 Is it not true that the FCC has ruled that
3 EELS must be provided in any instance where Verizon
4 chooses to exercise the four-line unbundled local
5 switching exception, whether or not the EELS are,
6 quote, currently combined, unquote, UNEs as Verizon
7 interprets that term? Or in other words, another
8 way of phrasing that question, is where does it say
9 in FCC rules that Verizon may restrict the
10 availability of EELS to those instances where the
11 UNEs--where the EEL UNEs are currently combined?
12 That's the thrust of the question.

13 MS. FOX: Okay. The way I understand what
14 you just asked is that in the event we are taking
15 advantage of the local switching exception, we will
16 also provide EELS, but you also used the words "in
17 any instance," so could you be more specific?

18 MR. MELLUPS: I didn't hear the last one.

19 MS. FOX: I wrote down some of what you
20 were asking. And you're asking whether we agree
21 that the FCC ruled that EELS would have to be
22 provided in any instance, given we take

1 advantage--and I'm paraphrasing--of the local
2 switching exception.

3 MR. MELLUPS: Yes.

4 MS. FOX: Now, it's my understanding of
5 our obligation that if we take advantage of the
6 local switching exception, and as Nancy said, what
7 that really would mean is that local switching
8 would be priced at something other than TELRIC
9 prices, but it still would be available. In the
10 same area we would also offer new EELS, so CLEC
11 would be able to place a new order for a new EELS.
12 But we would subject that order to the local-use
13 options as outlined in the Supplemental Order
14 Clarification.

15 MR. MELLUPS: So, it's Verizon's position
16 to follow up its--to follow up, it's Verizon's
17 position that EELS would only be available in those
18 situations where the loop and the transport
19 elements are, quote, currently combined, unquote?

20 MS. FOX: Well, "currently combined" means
21 already combined.

22 MR. MELLUPS: Yes. I'm using the term as

1 you defined this.

2 MS. FOX: Let's break this down into
3 conversions and placing a new order for a new EEL.
4 If we take advantage of the local switching
5 exception or exemption, you would be able to do
6 both. You would be able to convert special access,
7 existing access, as well as place a new order for
8 an EEL.

9 MR. MELLUPS: What I'm trying to get at is
10 where--

11 MS. FOX: Where that would occur?

12 MR. GARY: Getting right back to the same
13 question earlier with Mr. Schneider. That is, when
14 do we offer EELS? Do we offer it as part of the
15 local use exemption or offer it otherwise, and we
16 decided to take that to the back because it's a
17 legal question.

18 MR. MELLUPS: I'm happy to take that to
19 the break.

20 That's all I have.

21 MS. FARROBA: Is that all the questions on
22 III-9?

1 MR. SCHNEIDER: No.

2 MS. FARROBA: Are there questions on
3 VI-3-B and VII-10 and VII-11?

4 MS. KELLEY: I have a couple on VI-3-B. I
5 will try to make it very brief.

6 Issue VI-3-B, I'm going to--the first
7 question I have to whomever, is that the provision
8 that you're contesting is in the existing contract?
9 Isn't that true?

10 MR. ANTONIOU: It's unclear to me whether
11 it is, but if you're certain it is, we will take
12 that.

13 MS. KELLEY: In your testimony--and this
14 is the same testimony I referred to a moment
15 ago--the late filed testimony of August 31st, which
16 is Verizon Exhibit 23, and I'm specifically
17 referring to page 13, the issue begins on page 12,
18 lines 13 and 14, you indicate that WorldCom is
19 trying to rewrite the rules, and you complain that
20 we used the word "parity," and say that instead the
21 phrase "at least equal in equality to that which
22 the incumbent LEC provides to itself" should be

1 used. If we replaced the word "parity" in that
2 provision with the word "phrase," that would
3 satisfy your concern; is that true?

4 MR. ANTONIOU: We would be pleased to take
5 the words that have been used by Congress and the
6 Act to deal with the issue under 251(c)(3) and by
7 the Commission, and I'm looking for the reference
8 47 CFR 51-311(a) and (b).

9 So, generally the answer is yes, subject
10 to making sure the words are the same as what the
11 law is.

12 MS. KELLEY: I'm using the words in your
13 testimony.

14 So, do I take it that the answer is
15 generally yes, if we substituted the word "parity,"
16 the words you included, that address the concern
17 you identified?

18 MR. ANTONIOU: I think generally that's
19 right.

20 MS. KELLEY: I want to walk through a few
21 of the clauses in 3.2, and that section begins with
22 the introductory clause, "each network element

1 provided by Verizon to MCIm, unless identified
2 differently in this agreement, shall be provided at
3 parity," although we could substitute that phrase
4 that we just discussed "in a nondiscriminatory
5 manner" and "the areas of," and we list some areas,
6 one of which is performance.

7 Now, I take it that it's not your position
8 that you are entitled to provide elements which do
9 not perform in a manner, and again using your
10 phrase, at least equal in quality to that which you
11 provide to yourself.

12 MR. ANTONIOU: As a general matter, I
13 think that's right.

14 MS. KELLEY: Similarly, just to pick
15 another phrase, we described features, functions
16 and capabilities of such elements.

17 Again, I assume it's not your position
18 that you are entitled to provide features,
19 functions and capabilities of levels that are
20 not--and again using your phrase--at least equal in
21 quality to that which you provide to yourself?

22 MR. ANTONIOU: Clearly you're taking these

1 bit by bit, these various subsets of what you would
2 like equal in quality to mean, and our concern with
3 them is that by doing that you set up a scenario in
4 which arguably we are agreeing to provide a UNE as
5 it's been taken apart from some other service,
6 where the entire service has a certain metrics
7 associated with it. And in that case, I don't
8 think we would be providing transport as a UNE in
9 exactly--with exactly the same matrix associated
10 with it that might be in some other contractor or
11 tariff where there may be additional remedies
12 associated with not providing a service as
13 promised.

14 MS. KELLEY: I'm sorry, it's probably me.
15 I'm just confused. But in this clause we say--we
16 propose that you agree that with respect to each
17 network element, you will provide the features,
18 functions and capabilities, and again using your
19 language, at least equal in quality to that which
20 you provide yourself.

21 Do I take from your answer that you're
22 indicating in some circumstances it's your intent

1 not to do that?

2 MR. ANTONIOU: My answer is that 51-311
3 (a) and (b) requires us to provide our services to
4 all requesting carriers in the same way with equal
5 quality to that which we provide ourselves, and
6 that is what we are proposing to put in the
7 contract, not a further gloss as you're describing
8 it. Not a further gloss with all these subsets you
9 believe equal in quality is.

10 MS. KELLEY: I understand you don't want
11 the level of detail we do, but my question is: Are
12 you attempting to preserve the right to have
13 features, functions, and capabilities of UNEs that
14 are not equal in quality to that which you provide
15 yourself?

16 MR. ANTONIOU: No.

17 MS. KELLEY: That's all I have.

18 MR. MELLUPS: I think I had three
19 questions on VII-10.

20 The first question is, I take it it's
21 Verizon's position that AT&T must resort to the
22 network element bona fide request or BFR process to

1 obtain a loop that has served integrated loop
2 carrier, IDLC, for which no spare copper facility
3 is available.

4 Is that still your position?

5 MS. GILLIGAN: What was the old GT portion
6 of the footprint, we called it a bona fide process.
7 In instances where the customers served the IDLC,
8 we would look for copper facilities to be able to
9 provide the loop facility.

10 MR. MELLUPS: If the copper facilities are
11 not available, you would go to the process?

12 MS. GILLIGAN: What we would then do is
13 contact the engineering organizations to see if we
14 could make an attempt to do some sort of a swap and
15 make available copper facilities.

16 MR. MELLUPS: And what's the process after
17 that? Do you get to the BFR process at some point
18 in the process of provisioning something that's on
19 IDLC?

20 MS. GILLIGAN: Not that I'm aware of.

21 MR. MELLUPS: I don't have any further
22 questions.

1 MS. KELLEY: We are now on only AT&T
2 issues, that's correct.

3 MS. FARROBA: Did you all have any more
4 questions for subpanel one?

5 MR. SCHNEIDER: Subject to calling the
6 panel back, if we can't resolve this other thing.

7 ARBITRATOR ATTWOOD: We would propose to
8 take our break now and call the entire panel back
9 for staff questions to readjourn at 2:00--reconvene
10 at 2:00.

11 (Whereupon, at 12:25 p.m., the hearing
12 was adjourned until 2:10 p.m., the same day.)
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AFTERNOON SESSION

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ARBITRATOR ATTWOOD: Can we go back on the record.

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A couple of issues. I'll raise it to the group, if you want, Chris. I'll raise it to the group, if you want, and have you guys think about it.

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When we were considering the testimony over the break, we recognized that on the issues presented on to the panel there were different folks testifying then who testified in the written submission testimony, and I suspect that will happen on any number of panels. And the question we would like to have you, the lawyers, consider, and so I let you talk to your lawyers, but then after the next break we can come back is whether we can formally ask the--those that have been submitted for and who are testifying, for example, Chris was testifying this morning, was not one of the affiants, whether they would agree to adopt the testimony as submitted.

1 But we are open to suggestions. We just
2 want to actually clean the record up to make sure
3 that we have those that are testifying consistent
4 with the written testimony, and I suspect that will
5 happen with any number of panels and any number of
6 parties, so after the next break, if you could talk
7 about that and come back with suggestions, that
8 would be useful.

9 In addition, I'd like your thoughts on--we
10 are having some trouble making sure that we've kept
11 up-to-date with the most recent contract language,
12 that is, under discussion in the testimony, and I
13 want to explore with you how we could make sure
14 that the most recent testimony is submitted in the
15 record. Most recent language, I should say, is
16 submitted into the record.

17 And it may be that, for example, it would
18 be useful for us--I'm not trying to overburden you
19 while we're in the middle of the hearing, but it
20 would be useful for us to have the most recent
21 disputed language made available at some point
22 early next week, for example. Or make the entire

1 language with some annotation as to what's in
2 dispute that's currently operating now, made
3 available to us. I'll let you all discuss that,
4 but there's a bit of a difficulty for us following
5 what it is that you are referring to, and we want
6 to make sure we have exactly the language that you
7 are relying on, because we're trying to assess
8 which language is making more sense.

9 So, I think it would help, if we could, as
10 an evidentiary matter, work from the same document
11 or the same set of documents, at least the most
12 up-to-date and introduce that into evidence. There
13 was an effort to do that on the DPL, but it seems
14 like that hasn't been the most current, up-to-date
15 language. So, if you could consider that and come
16 back with us, that would be helpful, okay?

17 Moving back into testimony, I guess Cathy
18 will begin. We're not going to go in the order of
19 the--we are obviously doing--I'm sorry, what?

20 MR. STANLEY: I'm sorry, my understanding
21 was that before we got to the FCC's
22 cross-examination, the parties WorldCom and AT&T

1 were going to discuss an issue with Verizon. And,
2 Mark, you indicated that the parties had not been
3 able to reach a common understanding, and we said
4 that you would be allowed to finish up with
5 questions.

6 MR. SCHNEIDER: Yes, if it's okay just to
7 make the record here.

8 ARBITRATOR ATTWOOD: I'm sorry. That's
9 right. Correct.

10 CROSS-EXAMINATION

11 MR. SCHNEIDER: This concerns issue III-7,
12 and our discussion which was cut short earlier and
13 again concerns the switching exception that's set
14 out in the Remand Order and Verizon's understanding
15 of the contours of that exception.

16 And if I can ask, my understanding is that
17 the--we were talking about contract language--the
18 contract language upon which Verizon relies is
19 Section 1.1 of its UNE attachment, which states
20 that Verizon will provide combinations and UNEs in
21 accordance with applicable law. And the nature of
22 our dispute apparently is what the applicable law

1 is, so I would just like to get that on the record
2 so it's teed up.

3 It's not better teed up, I might add,
4 because WorldCom was under the understanding that
5 it was settled, and we took the issue off.
6 Probably the safest thing to say is that I was
7 wrong about that. It wasn't settled.

8 So, with that understanding, let me ask:
9 This part, I believe, is settled. Your
10 understanding of the switching exception is, is it
11 not, that if you invoke the switching exception and
12 deny CLECs access to unbundled local switching at
13 TELRIC rates, you will provide EELS, or enhanced
14 extended links that are new combinations on a
15 voluntary basis.

16 MR. ANTONIOU: Our understanding of
17 current regime, current applicable law is that, in
18 fact, we would provide new wheels in that context.
19 That's not to say that, in fact, we think we
20 should. It's just a testament to what the law is.

21 In fact, in another docket, as you
22 probably know--

1 ARBITRATOR ATTWOOD: You shouldn't follow
2 the law? Kidding, joke.

3 MR. ANTONIOU: Just to make clear, that
4 wouldn't be construed to say that if in this other
5 docket it's ruled that there doesn't need to be
6 provision of new wheels if the switching exception
7 is invoked that by virtue of saying yes now we
8 would be bound.

9 MR. SCHNEIDER: Fair to say that both
10 sides are disputing in the proper forum all sides
11 of this issue.

12 MR. ANTONIOU: Under the current rules,
13 yes, we agree with you, notwithstanding anything to
14 the contrary earlier.

15 MR. SCHNEIDER: On the other hand, when in
16 your contract you say it's subject to applicable
17 law, it is your position, is it not, that the
18 Supplemental Order of Clarification that was
19 published after the UNE Remand Order, is not
20 limited to the issue of conversion of access of
21 circuits to UNEs, but more generally applies to
22 provision of EELS generally.

1 MR. ANTONIOU: Our position is either
2 that's what the order provides for today or the
3 reasoning in that order, which clearly applies to
4 conversions, which is to say that competing
5 carriers should be able to, for the purposes of
6 providing significant amount of local exchange
7 service, convert the special access services to
8 loop transport combinations, but also apply to new
9 EELs.

10 So, if your question is, are we saying
11 that the law definitely is that, we think that's
12 the law, but even if that weren't explicitly what's
13 in that order, the reasoning would apply the same.

14 MR. SCHNEIDER: So, in your contract
15 provisions in 1.1 and more generally when you say
16 the requirements of applicable law, I take it what
17 you mean, then, is not only the laws that's firmly
18 decided, but your view of how the law should be
19 applied more generally even in cases where it
20 hasn't been specifically applied in that case; is
21 that right?

22 MR. ANTONIOU: I think that's fair.

1 MR. SCHNEIDER: And I take it it is also
2 your view of the law that the voluntary provision
3 of EELS that is set out as a precondition for the
4 invocation of the switching exception is limited by
5 applicable law. That is to say, if you're right
6 that the law says you don't have to provide EELS
7 unless one of the three safe harbors are met, then
8 it is your view that you would not have to provide
9 EELS if one of the three safe harbor is met in the
10 context of the switching exception.

11 MR. ANTONIOU: I think that's right.

12 To put it another way, the distinction
13 between provision of new EELS with respect to the
14 switching exception versus providing conversions to
15 loop transport combinations is that in the former,
16 the new EELS, we, in fact, are going out and
17 combining something that wasn't combined, but
18 otherwise, the standards are the same, whatever
19 they may be, from time to time.

20 MR. SCHNEIDER: And I take it your
21 understanding--I will leave you a hypothetical. A
22 customer in density zone one, the customer to whom

1 the switching exception would apply, density zone
2 one, three or more lines, however the Commission
3 resolves that dispute, in a situation who is
4 getting UNE-P from WorldCom, in a situation where
5 WorldCom does not have co-locations in place, so
6 the first two of the safe harbors would not apply,
7 and so that if WorldCom is entitled to continue to
8 get unbundled local switching at UNE rates, it
9 would have to, in your view, satisfy the third safe
10 harbor? Are you with me so far?

11 MR. ANTONIOU: Yes. I think that's right.

12 MR. SCHNEIDER: Okay. Your view of that
13 third safe harbor is, unless WorldCom can verify
14 that that customer--excuse me--can verify that
15 customer is using at least 50 percent of the
16 activated channels for local exchange service as
17 opposed to, say, switched access services, that
18 customer would not be entitled--sorry, WorldCom
19 would not be entitled to continue to use an EEL?

20 MR. ANTONIOU: I haven't looked at the
21 words. Assuming that the percentages are as you
22 state, yes. That's what the rule is.

1 MR. SCHNEIDER: My point is that Verizon's
2 understanding of the third exception includes not
3 only dedicated access services, but switched access
4 services, so that the various 50 percent and
5 33 percent thresholds in Verizon's understanding of
6 the regulation would require WorldCom to make
7 statements about use of everything--local service
8 excluding switched access service.

9 MR. ANTONIOU: Yes, the distinction is
10 local exchange service versus access service
11 without breaking access service into different
12 buckets.

13 MR. SCHNEIDER: So, a customer--in a place
14 where you've taken away--where you have declined to
15 provide switching and are voluntarily providing
16 EELS.

17 MR. ANTONIOU: Well, we couldn't decline
18 to provide switching. We wouldn't provide
19 switching at UNE rates. We would still be
20 providing switching.

21 MR. SCHNEIDER: Decline to provide
22 switching as an unbundled network element according

1 to the Act and would only be entitled to EELS, in
2 your view, if--and there is no co-location, if
3 WorldCom can certify that there was a certain
4 amount of local traffic excluding switched access
5 traffic and dedicated access traffic.

6 MR. ANTONIOU: That the third exception
7 were met, which I think is what you are
8 paraphrasing, yes.

9 MR. SCHNEIDER: And I take it, because you
10 mentioned a couple of times that, even in that
11 event you would provide unbundled local switching
12 but not as a UNE, but at what you call market-based
13 rates?

14 MR. ANTONIOU: It would not be provided as
15 a UNE. We would provide it at some other rate.

16 Do you want to speak to the rate base?

17 MS. GILLIGAN: I believe the way it's
18 phrased is we could charge market-based rates. We
19 haven't determined what those are.

20 MR. SCHNEIDER: I take it it would be a
21 switching service since it's not an unbundled
22 network element?

1 MR. ANTONIOU: It would be switching.
2 Whether it's a service or not, I'm not sure I
3 follow.

4 MR. SCHNEIDER: Well, it's not an
5 unbundled network element. I'm just curious how--I
6 take it there is no way to order it now, and it's
7 not tariffed. I'm just curious what it is that we
8 would be able to we do.

9 MS. GILLIGAN: It is local switching, but
10 it's at a non-UNE rate.

11 MR. SCHNEIDER: Is it tariffed?

12 MS. GILLIGAN: Not yet.

13 MR. ANTONIOU: It's something that is
14 entirely theoretical. It's not something we've
15 taken advantage of. It's not something we've, as
16 far as I'm aware of, have taken much time to sit on
17 it and plan how to do. So, it's rather difficult
18 to answer your question as to how we do it since we
19 haven't been thinking about doing it.

20 MR. SCHNEIDER: I'm just curious, what
21 that contemplates is that there would be, I take
22 it, for a UNE-P customer a combination of unbundled

1 elements plus this non-unbundled network element
2 that you would provide to us; is that correct?

3 MR. ANTONIOU: We would provide switching
4 in that case.

5 MR. SCHNEIDER: And it would be tariffed?

6 MS. GILLIGAN: Or contractual.

7 MR. SCHNEIDER: I take it it's your view
8 that one of the purposes of an interconnection
9 agreement is to make clear to the parties what
10 their various rights and responsibilities are?

11 MR. ANTONIOU: I couldn't argue with that.

12 MR. SCHNEIDER: And I know you have argued
13 in the context of the position--provision we are
14 talking about now, 1.1, that it's adequate to have
15 a contract that says that Verizon will provide
16 combinations in accordance with applicable law; is
17 that correct?

18 MR. ANTONIOU: Yes.

19 MR. SCHNEIDER: And that the various
20 things we've talked about the last 20 minutes about
21 what Verizon means by applicable law in this
22 context are meant to be encapsulated in that phrase

1 applicable law; is that correct?

2 MR. ANTONIOU: They're encapsulated in the
3 orders we have been referring to.

4 MR. SCHNEIDER: Would you like to
5 reconsider your view that we perhaps it would be
6 helpful to have contract language that actually
7 spelled out what particular obligations you think
8 you are required to provide or that you're willing
9 to provide in a contract as opposed to a more
10 general statement like "applicable law"?

11 MR. ANTONIOU: I'm very comfortable with
12 the words that we've suggested.

13 MR. SCHNEIDER: Nothing further, thanks.

14 ARBITRATOR ATTWOOD: Are we through with
15 questions from the parties? Okay. We have a
16 number of questions from staff, but we will be
17 focused on issues, but we're not going to go in a
18 straight issue list if that's okay with you. We're
19 trying to organize it around staff time actually,
20 so why don't begin with Cathy. Could you identify
21 for the record what it is that we are going to
22 focus on.

1 MS. CARPINO: Good afternoon, my name is
2 Cathy Carpino, and I have just a few questions for
3 both Verizon and WorldCom on issue VI-3-B, which is
4 the technical standards and specification issues
5 that was addressed some--well, not at some length,
6 but somewhat this morning.

7 I guess my questions are designed to give
8 staff a little more information about, first, why
9 WorldCom finds the existing language now
10 unacceptable, and conversely, why WorldCom feels
11 this language needs to remain in the agreement with
12 little more specificity than what was given in the
13 testimony.

14 So, first, I would like to ask the Verizon
15 panel what problems, if any, have you encountered
16 as a result of the existing language in this
17 agreement?

18 MR. ANTONIOU: I'm not aware, unless
19 someone else on our panel is, that there has been a
20 problem with the language. That said, if I could,
21 I would like to address a couple of issues with it.

22 MS. CARPINO: I should say let's take the

1 parity issue off the table. That was already
2 discussed this morning.

3 MR. ANTONIOU: Okay. I guess I will work
4 from the bottom up. 3-2-2 that WorldCom has
5 suggested provides in relevant part that Verizon
6 would work with MCI to ensure the network elements
7 that Verizon provides under the agreement meet
8 MCI's reasonable needs in providing service to its
9 subscribers.

10 Someone might look at that and say it
11 seems innocuous enough. Why would Verizon have a
12 problem with that? What MCI might reasonably want
13 to do does not necessarily square with what it is
14 that we need to do on their behalf. And it's not a
15 theoretical point only. An example I would think
16 of is that WorldCom has a particular service that
17 it had the idea to provide. The technical
18 parameters of that service are ones that--such that
19 we don't have a right to it under a particular
20 license agreement with the vendor, and thus, in
21 order to provide the UNE to WorldCom to meet what
22 it views, perhaps even rightly its reasonable

1 desires in providing a service, we don't have a
2 right to give them that UNE. The UNE can only be
3 used a certain way. I don't have a particular one
4 in mind, but the language would lend itself to the
5 interpretation that we somehow have to help them in
6 giving them the UNE to be able to use it in the way
7 they want to use it.

8 Our view is as a general matter, however
9 we could use the UNE, whatever rights that we have
10 under our licensing arrangements with various
11 vendors, and particularly software vendors, that
12 we're going to give whatever rights we could
13 possibly give to those who want to use our UNE.

14 There is another whole separate issue
15 about what obligation we have to go out and get
16 additional rights. If some vendor were to come
17 back and say, oh, Verizon, when you got that
18 license arrangement, it was only for you, it's not
19 for someone else. The good news is it's
20 theoretical at this point. We haven't had vendors
21 do that, thank goodness. But if they were to come
22 back and say to us, Verizon, we only said you could

1 do A through Z with this, WorldCom, there's some
2 other party, one of the CLECs that you work with,
3 that wants to do Double A, something different,
4 they don't have the right to do that. You don't
5 have the right to give them what it is that we gave
6 you to do that. I think that language 3.3--I'm
7 sorry, 3.2.2--would argue that we have to do that,
8 and that's why I have a problem with it.

9 MS. CARPINO: Okay, let's just continue
10 on.

11 MR. ANTONIOU: Okay. 3.2.1 I see as
12 WorldCom's desire to have some sort of information
13 to see whether, in fact, we're doing what we
14 otherwise had to do under applicable laws is what
15 we would agree to. Moving back up to 3.2, they
16 have a different description than what we have.
17 But my concern with 3.2.1 is that it seems to me
18 WorldCom wants to be in the middle of and have
19 access to everything that we use to determine how
20 it is that we provide a service. The drawing
21 board, so to speak.

22 I think Joe or one of the other panel--

1 MS. CARPINO: Has this been a problem in
2 Virginia?

3 MR. ANTONIOU: I'm not aware of it having
4 been a problem, and I can appreciate the question
5 in that if it were, I could point to it and say
6 it's come up. On the other hand--

7 MS. CARPINO: Are the other witnesses
8 aware of any difficulties or problems?

9 MR. ANTONIOU: My concern with that being
10 the standard for the decision is that in particular
11 in some places where a carrier hasn't perhaps made
12 either a concerted effort or for whatever reason
13 hasn't gotten into the business, that this may be
14 something they haven't looked at. This is
15 obviously something that we are looking at now. My
16 concern is that this is a license to go into our
17 proprietary information and use that in ways that
18 perhaps go beyond what is the stated intent for its
19 use here. I don't think that's fair or
20 appropriate.

21 MS. CARPINO: Are engineering, design,
22 performance, and other network data technical

1 information?

2 MR. ANTONIOU: I'm sorry, I didn't hear
3 the question.

4 MS. CARPINO: In 3.2.1, the existing
5 agreement has that you shall make available upon
6 reasonable request engineering, design,
7 performance, and other network data.

8 My question is: Do you consider that to
9 be technical information?

10 MR. GANSERT: Yes.

11 MS. CARPINO: Is your concern with the
12 language about sufficient for MCI to determine that
13 the requirements of this section are being met?
14 And if that were modified to perhaps model the
15 language contained in Rule 307, which is to achieve
16 access to UNEs unbundled network elements
17 consistent with the requirements of Section 307,
18 does that alleviate to some extent your concerns?

19 MR. ANTONIOU: I would like to take a look
20 at the language, if I could.

21 MS. CARPINO: Rule 307, I believe it's E.

22 MR. GANSERT: Basically, that's the rule

1 that says that we need to publish the technical
2 information that tells you how to interface with
3 our equipment for any of the UNEs that are offered,
4 and we will certainly comply with that.

5 MS. CARPINO: I'm sorry, I can't hear you.

6 MR. GANSERT: I said that rule basically
7 says that we have to provide whatever technical
8 information is needed so that the approaches of
9 unbundled element can technically--knows how to
10 technically interface with and interconnect with
11 the facilities, and we certainly provide that as
12 part of our regular practice for all the UNEs.

13 MS. CARPINO: So, you wouldn't have any
14 objection to including language that tracks 307(e)
15 and this agreement; is that correct?

16 MR. ANTONIOU: Our view would be that this
17 language is already combined and contained in
18 Section 1.1. We would be happy if that is
19 something that the petitioners wished to include.

20 MS. CARPINO: Is that issue 1.1?

21 MR. ANTONIOU: No, no, I'm sorry. It's
22 Section 1.1 of Verizon's proposed UNE attachment.

1 We believed that by saying that we were going to
2 provide UNES in a manner of the course of
3 applicable law that it certainly includes the
4 effective rules, but we are happy to put this rule
5 in.

6 MS. CARPINO: Okay. All right, let's
7 continue on in the interest of time. 3.2. We
8 talked about that at some length this morning, so
9 there is no need to cover there. Are there any
10 other concerns that you have with that language?

11 MR. ANTONIOU: I think we expressed our
12 concerns. And I don't have any other stand.

13 MS. CARPINO: Okay. WorldCom folks. Do
14 you have any response to what you've heard the
15 Verizon witness say?

16 MR. LATHROP: Yes. With respect to the
17 last issue first, the 3.2.1 mentions technical
18 information and what we have always been willing to
19 talk to Verizon about the language, and what we
20 were trying to do in this section is to provide
21 additional specificity that we think is important
22 so that, for example, if Verizon were to say our

1 interpretation of technical information is how we
2 have designed the system, that doesn't give us an
3 indicator as to the performance and whether
4 something is being provided in a nondiscriminatory
5 manner.

6 MS. CARPINO: I guess just to be clear for
7 the record, do you believe the information
8 contained or the language contained in 3.2.1 is
9 designed to elicit the information set forth or
10 you're required to receive under Rule 307(e)?

11 MR. LATHROP: Yes, generally, only
12 adding--

13 MS. CARPINO: Right, additional
14 specification which they've agreed is technical
15 information.

16 MR. LATHROP: Yes.

17 MS. CARPINO: Verizon has agreed is
18 technical information.

19 MR. LATHROP: Yes.

20 Our concern with Verizon's reference to
21 their Section 1.1 that they believe is sufficient
22 is that section Verizon references includes